

United States District Court

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JIMMIE EARL STEPHEN,)
12 Plaintiff,) No. C 08-00957 JW (PR)
13 vs.) ORDER OF TRANSFER
14 R. HERNANDEZ, et al.,)
15 Defendant(s).)
16 _____ (Docket Nos. 2, 4, 5 & 9)

18 Plaintiff, an inmate currently incarcerated at the California Men's Colony
19 ("CMC") State Prison in San Luis Obispo, filed a pro se civil rights complaint
20 pursuant to 42 U.S.C. § 1983, alleging that prison officials at R. J. Donovan
21 Correctional Facility at Rock Mountain ("RJD") in San Diego, California, violated
22 his constitutional rights while plaintiff was housed at RJD.

23 Venue may be raised by the court *sua sponte* where the defendant has not
24 filed a responsive pleading and the time for doing so has not run. See Costlow v.
25 Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986). When jurisdiction is not founded
26 solely on diversity, venue is proper in (1) the district in which any defendant resides,
27 if all of the defendants reside in the same state; (2) the district in which a substantial
28 part of the events or omissions giving rise to the claim occurred, or a substantial part

United States District Court

For the Northern District of California

1 of the property that is the subject of the action is situated; or (3) a judicial district in
2 which any defendant may be found, if there is no district in which the action may
3 otherwise be brought. See 28 U.S.C. § 1391(b). When venue is improper, the
4 district court has the discretion to either dismiss the case or transfer it “in the interest
5 of justice.” See 28 U.S.C. § 1406(a).

6 It is clear from the instant complaint and the attachments thereto that a
7 substantial part of the events or omissions giving rise to plaintiff’s claims arise out
8 of actions alleged to have been committed at RJD by RJD officials. RJD is located
9 in San Diego, California. San Diego is located within the venue of the Southern
10 District of California. See 28 U.S.C. § 84(d). As a result, venue is proper in the
11 Southern District of California, not in the Northern District. For the foregoing
12 reasons, plaintiff’s motion to stay transfer of venue (Docket No. 4) is DENIED.

13 Accordingly, in the interest of justice, the above-titled action is hereby
14 TRANSFERRED to the United States District Court for the Southern District of
15 California. In light of the transfer, this Court will defer to the Southern District with
16 respect to plaintiff’s motions for leave to proceed in forma pauperis (Docket Nos. 2
17 & 5) and motion for appointment of counsel (Docket No. 9). The clerk shall
18 terminate as moot Docket Nos. 2, 5 and 9 from this Court’s docket.

19 The clerk shall transfer this matter and close the file.

20
21 DATED: _____
22 April 11, 2008
23
24
25
26
27
28



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN,

Case Number: CV08-00957 JW

Plaintiff,

CERTIFICATE OF SERVICE

v.

R. HERNANDEZ, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/11/2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jimmie Earl Stephen C 56483
California Men's Colony State Prison
P. O. Box 8101
San Luis Obispo, Ca 93409-8101

Dated: 4/11/2008

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk